



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 20 2016

REPLY TO THE ATTENTION OF

LC-8J

CERTIFIED MAIL 7011 1150 0000 2640 2235
RETURN RECEIPT REQUESTED

Mr. Matt Miedema
909 42nd Street
Wyoming, Michigan 49509

Consent Agreement and Final Order In the Matter of:
Matt Miedema, Docket No. TSCA-05-2016-0010

Dear Mr. Miedema:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in Resolution of the above case. This document was filed on September 20, 2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,500 is to be paid in the manner described in paragraphs 45 and 46. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Grace".

Pamela Grace
Pesticides and Toxic Compliance Section
Land and Chemicals Division

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Matt Miedema
Wyoming, Michigan,

Respondent.



Docket No. TSCA-05-2016-0010

Proceeding to Assess a Civil Penalty
Under Section 16(a) of the Toxic
Substances Control Act, 15 U.S.C.
§ 2615(a)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and Section 22.1(a)(5), 22.13(b), and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. § 22.1(a)(5), 22.13(b), and 22.18(b)(2) and (3).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Matt Miedema of Wyoming, Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of an administrative complaint, the action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO; however, Respondent neither admits nor denies the general allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including its right to request a hearing or petition for judicial review under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, Oct. 28, 1998 (Title X), Congress found, among other things, that low-level lead poisoning was widespread among American children, afflicting as many as 3,000,000 children under the age of six; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards. *See* 42 U.S.C. § 4851.

10. Section 1021 of Title X amended TSCA by adding Sections 401-412, entitled Lead Exposure Reduction, 15 U.S.C. §§ 2681 through 2692.

11. Pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), EPA promulgated regulations amending 40 C.F.R. Part 745, Subparts E and L, that apply to renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create lead-based paint hazards. These regulations prescribe work practice standards and ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that contractors engaged in such activities are certified. These requirements are known as the Renovation, Repair and Painting Program Rule (RRP Rule).

12. Section 407 of TSCA, 15 U.S.C. § 2687, required that the regulations promulgated by the EPA Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV (TSCA §§ 2681-2692).

13. 40 C.F.R. § 745.82(a)(1) makes 40 C.F.R. Part 745, Subpart E applicable to renovations of target housing performed for compensation.

14. 40 C.F.R. § 745.83 defines “firm” as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

15. 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

16. 40 C.F.R. § 745.83 defines “renovation” as the modification of any existing

structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

17. 40 C.F.R. § 745.83 defines “renovator” as an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

18. 40 C.F.R. § 745.103 defines “residential dwelling” as a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

19. 40 C.F.R. § 745.103 defines “target housing” to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

20. Under 15 U.S.C. § 2689 and 40 C.F.R. § 745.87(a), failing to comply with any requirement of 40 C.F.R. Part 745, Subpart E, violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative civil penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

21. The Administrator of EPA may assess a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA that occurred after December 6, 2013, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615, 40 C.F.R. § 745.87(d), and 40 C.F.R. Part 19.

General Allegations

22. Complainant incorporates paragraphs 1 through 21 of this CAFO as if set forth in this paragraph.

23. At all times relevant to this CAFO, Respondent was an individual doing business in Michigan. Respondent was therefore a “person” and a “firm,” as defined at 40 C.F.R. § 745.83, at all times relevant to this CAFO.

24. Pursuant to a contract dated May 9, 2015, Respondent performed, or directed workers to perform for compensation, modifications at 220 Oakley Place NE, Grand Rapids, Michigan (the Grand Rapids property), a residential dwelling built in 1890. In particular, Respondent disturbed and removed painted surfaces and components and generated paint dust and debris at the Grand Rapids property by scraping, priming, and painting the house from May 18 to June 12, 2015.

25. The Grand Rapids property is “target housing” as defined at 40 C.F.R. § 745.103.

26. Respondent’s contracted work at the Grand Rapids property from May 18 to June 12, 2015 was a “renovation” as defined at 40 C.F.R. § 745.83.

27. From May 9 to June 12, 2015, Respondent was a “renovator” as defined at 40 C.F.R. § 745.83.

Count 1 – Failure to Retain and Make Available All Records Necessary to Demonstrate Compliance with 40 C.F.R. Part 745, Subpart E

28. Complainant incorporates paragraphs 1 through 21 of this CAFO as if set forth in this paragraph.

29. Under 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the residential property renovation requirements at 40 C.F.R. Part 745, Subpart E, for a period of 3 years following completion of the renovation. Under 40 C.F.R. § 745.86(b), this includes documentation that the firm complied with the work practice standards in 40 C.F.R. § 745.85, documentation that a certified renovator was assigned to the project, and documentation that the certified renovator performed or directed workers who performed the renovation activities.

30. Respondent failed or refused to establish and maintain records, or to make available such records, according to the requirements of 40 C.F.R. § 745.86(a) and 40 C.F.R. § 745.86(b).

31. Respondent’s failure to establish and maintain, or to make available records, violates 40 C.F.R. § 745.86(a), 40 C.F.R. § 745.86(b), 40 C.F.R. § 745.87(b), and 15 U.S.C. § 2689.

Count II – Failure to Cover Ground and Collect Falling Paint Debris During Renovation at the Grand Rapids property

32. Complainant incorporates paragraphs 1 through 21 of this CAFO as if set forth in this paragraph.

33. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires that before conducting renovation activities in target housing, the renovation firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

34. During the renovation at the Grand Rapids property described in paragraph 24, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material 10 feet beyond the perimeter of surfaces undergoing renovation or at a sufficient distance to collect falling paint debris.

35. For the renovation referenced in paragraph 24, Respondent's failure to cover the ground and collect falling paint debris violates 40 C.F.R. § 745.85(a)(2)(ii)(C), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count III – Failure to Contain Work Area to Prevent Cross-Property Contamination

36. Complainant incorporates paragraphs 1 through 21 of this CAFO as if set forth in this paragraph.

37. 40 C.F.R. § 745.85(a)(2)(ii)(D) requires that before conducting renovation activities in target housing, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

38. During the renovation at the Grand Rapids property described in paragraph 24, Respondent failed to take extra precautions in containing the work area to ensure that no dust and debris from the renovation contaminated other buildings or other areas of the property or migrated to adjacent properties.

39. For the renovation referenced in paragraph 24, Respondent's failure to take extra precautions to ensure that no dust and debris from the renovation contaminated nearby areas violated 40 C.F.R. § 745.85(a)(2)(ii)(D), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

Count IV – Failure to Clean Work Area Until No Dust, Debris, or Residue Remains

40. Complainant incorporates paragraphs 1 through 21 of this CAFO as if set forth in this paragraph.

41. 40 C.F.R. § 745.85(a)(5) requires that after the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains. In addition, 40 C.F.R. § 745.85(a)(5)(i)(A) requires the firm must collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

42. On June 12, 2015, Respondent completed the renovation described in paragraph 24, but failed to clean the work area until no dust, debris, or residue remained.

43. For the renovation referenced in paragraph 24, Respondent's failure to clean the work area violated 40 C.F.R. § 745.85(a)(5), 40 C.F.R. § 745.87(a), and 15 U.S.C. § 2689.

44. Respondent neither admits nor denies the allegations in Counts I-IV of this CAFO.

Civil Penalty

45. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant determined that an appropriate civil penalty to settle this action is \$2,500. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations alleged

and, with respect to Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require. Complainant also considered *EPA's Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*, dated August 19, 2010.

46. Within 30 days after the effective date of this CAFO, Respondent must pay the \$2,500 civil penalty for the TSCA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note the following: the case title ("In the Matter of Matt Miedema") and the docket number of this CAFO.

47. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment in paragraph 46. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Pamela Grace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

48. This civil penalty is not deductible for federal tax purposes.

49. If Respondent does not pay the civil penalty by the deadline, EPA may refer this matter to the Attorney General, who will recover such amount, plus interest, by action in the appropriate district court of the United States under Section 16(a) of TSCA, 15 U.S.C. § 2615(a). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

50. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest, fees, and penalties on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established, pursuant to 31 U.S.C. § 3717, by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

51. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

52. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

53. This CAFO does not affect the rights of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CAFO does not affect Respondent's responsibility to comply with TSCA, the

Residential Lead-Based Paint Hazard Reduction Act of 1992, the Lead Residential Lead-Based Paint Disclosure Program, and other applicable federal, state, and local laws.

- 55. Respondent certifies that it is complying with TSCA and 40 C.F.R. Part 745.
- 56. The terms of this CAFO bind Respondent, and its successors and assigns.
- 57. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
- 58. Each party agrees to bear its own costs and attorneys' fees in this action.
- 59. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Matt Miedema
Docket No. TSCA-05-2016-0010

Matt Miedema, Respondent

9/01/2016
Date

Matt Miedema
Matt Miedema

U.S. Environmental Protection Agency, Complainant

9/14/16
Date

for [Signature]
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: Matt Miedema
Docket No. TSCA-05-2016-0010

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

9/19/16
Date

Robert W. Kaplan
Robert Kaplan
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

In the Matter of: Matt Miedema
Docket Number: **TSCA-05-2016-0010**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the forgoing **Consent Agreement and Final Order**, which was filed on September 20, 2016 this day in the following manner to the addressees:

Copy by certified mail

Return Receipt Requested:

Mr. Matt Miedema
909 42nd Street
Wyoming, Michigan 49509

Copy by e-mail to

Attorney of Complainant:

Robert Peachey
Peachey.Robert@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle
Coyle.Ann@epa.gov

Dated: September 20, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5